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INTELLIGENCE COMMUNITY STAFF

3 SEP 1976

5A000500340004-9 Registry

76-5056/4

NOTE FOR THE DIRECTOR

SUBJECT: Establishment of National Foreign
CI Policy and Coordination
Mechanisms

*Justine
27 Dec 76*

Attached for your signature at Tab A is the memorandum to the Attorney General requesting his comments on the proposed attached Executive Order on CI. You saw an earlier version of these documents last week and referred them to Tony Lapham for his coordination. He suggested certain modifications (see Tab B) which have been incorporated in the attached. The memo has been substantially restructured to take into account Tony's tonal suggestions. The draft Order was coordinated with [redacted], DDO.

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Tony did note also (Tab B, paragraph 1b) that it might be better to set up only the National Counterintelligence Policy Committee (NCPC) at this time and not the proposed National Foreign Counterintelligence Board (NFCB). I believe that the NFCB is essential for the CI agencies "working level" coordination that is presently a major missing link in the national CI effort. One could modify the NFCB's "decision" authority but that would dilute its clout for implementing NCPC policies. In any event, I recommend we leave the NFCB in the documents for now and include Tony's point on this in the discussions we will be having with the AG.

*Signed 9-6-76
let's discuss
OK - later 07*

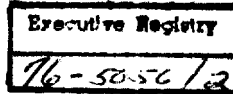
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OGC

Attachment
Tabs A & B

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(Specified F#9)



OGC 76-4757
27 August 1976

MEMORANDUM FOR: Director of Central Intelligence

FROM : Anthony A. Lapham
General Counsel

SUBJECT : Establishment of National Foreign Counterintelligence
Policy and Coordination Mechanisms

1. Ben Evans has relayed to me your request for my comments concerning the memorandum to the Attorney General proposed for your signature, subject as above, a copy of which is returned herewith:

a. I perceive no basic legal objection to the overall proposition.

b. I do have a gnawing feeling that this is another step in the direction of too many committees, boards, directives, etc. overseeing and directing the operating agencies. The proposed National Counterintelligence Policy Committee would be subordinate to the National Security Council. The National Foreign Counterintelligence Board would be subordinate to the former. The departments and agencies engaged in foreign counterintelligence would comply with the policies of the former and the decisions of the latter. The Committee, the Board, the Attorney General and the Director of Central Intelligence would issue directives implementing the new Executive Order and the departments and agencies would issue directives implementing those directives. The requirement that agencies engaged in foreign counterintelligence are to comply with decisions of the Board would mean that those agencies would have to comply with the decisions of a committee, one of whose members is a representative of that agency, that is, agency heads and their departments would be required to comply with instructions emanating from a committee a member of which is a subordinate of the agency head. (In objecting to this type of command situation, I am aware that it exists elsewhere.) At this stage it might be better to institute only the Policy Committee and provide that operating agencies are to be guided by policy actions of that Committee.

NOTE: Letter to Attorney Gen. not signed - all copies returned to IC

File 21F-19

c. Although there might be some public relations value in the provision, at section 3 of the proposed executive order, that the order is to be implemented "with full regard to the legal and/or constitutional rights of United States citizens," and I know that Executive Order 11905 embodies that concept, the provision suggests an erroneous implication. It suggests that absent section 3 there would be no requirement, or prohibition against, implementing the order without "full regard to the legal and/or constitutional rights" of citizens.

d. The proposed executive order requires some editorial and perfecting changes in language; when drafted, apparently the intention was that it be an NSC or DCI directive rather than executive order. The references in, for example, paragraph 2 and 7.a. to "this directive" would become "this Order." Also by way of a necessary editorial change in language, the reference in paragraph 7.b. to "paragraph 7.a. above directives" should read "directives issued pursuant to paragraph 7.a."

2. With respect to the proposed letter, again I think certain editorial and perhaps substantive or policy changes would be in order:

a. I think you would not want to include the last sentence of paragraph 8 of the letter concerning support to be expected "from across the political spectrum."

b. Paragraph 10 might more appropriately invite the Attorney General's representative to contact your representative whose name and telephone number would be included.

c. "Church's Committee" in paragraph 4.a. should be either "Senator Church's Committee" or "the Church Committee."

d. The letter recommends that the Attorney General take an action which, by virtue of PFIAB recommendations, probably is a responsibility of the Attorney General's, with or without referral from the Director. Further, the thrust is that the DCI is taking charge of this recommendation, leaving to the Attorney General merely a subordinate role. Perhaps the tone of the letter should be to refer the AG to the recommendations of PFIAB and the Church Committee, to indicate the DCI agreement therewith and to offer any DCI assistance. The draft order could also be forwarded with such a letter.

e. It may be the intention that your action in this letter would be in your capacity as Director of Central Intelligence, rather than as Head of CIA. In view of CIA's primary responsibility and interest in this area, the views and concurrence of the DDO or perhaps the DDCI, as well as those of the D/DCI/IC, should be requested.



STAT

Anthony A. Lapham

Distribution:

Original - Addressee

1 - DDCI

✓ - ER via Exec Secy

1 - OGC

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INTELLIGENCE COMMUNITY STAFF

25 August 1976

Executive Registry

76-5056/1

NOTE FOR THE DIRECTOR

Attached for your signature, Tab A, is a memorandum to Mr. Levi, the Attorney General, requesting his comments on a proposed attached Executive Order (to be unclassified when issued). The Order will establish an NSC-level National Counterintelligence Policy Committee (NCPC) chaired by the Attorney General and a subordinate National Foreign Counterintelligence Board. Courtesy copies of the memorandum will go to Gen. Scowcroft, Ambassador Ellsworth, Mr. Hyland, and Mr. Cherne. We also plan to advise Mr. Levi's staff informally that early receipt of Mr. Levi's views on the Executive Order is needed, that we plan to solicit views of appropriate Community CI agency and other leaders and would like, if possible, to obtain his views, especially with respect to the proposed role of the Attorney General.

For your background, I have also attached at Tab B an Intelligence Community Staff memorandum which details (a) the pros and cons of the Attorney General's serving as NCPC Chairman versus the DCI in that role; and (b) the reasons for using an Executive Order rather than a DCID, CFID, or NSCID.



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Attachments:
Tabs A & B

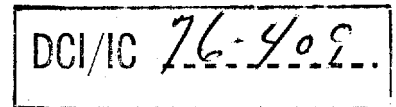
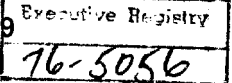
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THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D. C. 20505



MEMORANDUM FOR: The Honorable Edward H. Levi
The Attorney General

FROM: George Bush

SUBJECT: Establishment of National Foreign
Counterintelligence Policy and Coordination
Mechanisms

1. I am attaching for your consideration the draft of a proposed unclassified Executive Order to establish an NSC-level National Counterintelligence Policy Committee (NCPC) chaired by you, and a subordinate National Foreign Counterintelligence Board. This draft is a revision of one provided previously to a member of your staff for informal comment.

2. I believe there is clear need for a national foreign counterintelligence (CI) policy and for national mechanisms for meshing Community foreign CI activities. Foreign CI* is the only major intelligence discipline for which no national level interagency committee and policy structure exist. There is no national foreign CI policy. Five separate agencies engage in foreign CI activity, each on its own, i.e., FBI, CIA, Air Force Office of Special Investigations, Naval Investigative Service, and Army Military Intelligence Groups under the U.S. Army Intelligence Agency and certain Army Commands. There is required coordination of specific operations with CIA or the FBI, depending on the locus of the operation. Other arrangements are bilateral. There is no central management within the DOD of the military CI agencies.

3. The size and extent of the Soviet/East European/Cuban intelligence effort against the U.S. worldwide, but especially within the U.S., has increased the threat to U.S. national

*Foreign CI in this context does not include protective security functions such as personnel background investigations, complaint investigations, and protective security surveys and services; nor does it include criminal investigations. It does include foreign CI collection, foreign CI investigations for operational leads, foreign CI operations and foreign CI production.

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security. Not only the large long-term hostile presence in the U.S., but increased exchanges, commerce, and Soviet shipping visits all heighten the necessity for an effective, coordinated national foreign CI effort making economical use of limited available resources.

4. The initial focus of Senator Inouye's newly-established Senate Select Committee on Intelligence (SSCI) will likely be on the previous Church Committee's recommendations.

a. Church's Committee recommended (1) the creation of a new National Security Council CI Committee (established by statute) with the Attorney General as Chairman; and (2) a classified Presidential review of current CI issues to provide for enunciation of a classified Presidential statement on national CI policy and objectives.

b. Specific SSCI current concerns for CI are based on doubts regarding the substantive effectiveness, adequacy of interagency coordination, and protection of individual rights of the foreign CI effort.

5. PFIAB, pointing in a similar direction, has reported that "within the Intelligence Community, policy-level coordination of CI activities is inadequate," and that "at the national policy level, there is insufficient CI guidance." PFIAB has recommended (1) "the establishment at a senior level of a CI coordinating mechanism...responsible to the DCI and the Attorney General"; and (2) "the development by the Attorney General, in consultation with the DCI, of a national CI policy directive."

6. There is an inherent logic to the advocacy of a national CI policy mechanism under the Attorney General. As the nation's chief legal officer, he is the only national level officer, below the President, whose authority encompasses the FBI's domestic foreign CI activities and its domestic internal security functions. He is thus best able to define any uncertain problem areas. Furthermore, he is specifically charged by E.O. 11905 with establishing regulations governing the FBI's foreign CI activities. Since this inherently involves domestic U.S. political and legal considerations, he can both bridge the gap between the FBI and other foreign CI agencies and assure that provisions are made for protection of the rights of U.S. citizens.

7. The two tiered structure detailed in the attached draft is self-explanatory. The top committee by virtue of its level and chairmanship can set policy spanning the full

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range of foreign CI activities and production. The composition of the subordinate board can assure effective implementation of national policy and an informed, productive interchange on common problems and needs. Both will be able to encompass the entire foreign CI community. Neither the Committee nor the Board would have any authority over the law enforcement activities of the FBI or other Federal, State, or local law enforcement organizations.

8. I believe that the public release of this Executive Order at the time of its issuance, with accompanying explanation, can secure favorable public reaction and avert possible criticism based on distorted and/or incomplete leakage. Support for the Executive Order can be forthcoming from across the political spectrum.

9. To enable a fully staffed-out order to be prepared, I plan to solicit soon comments and suggestions on the attached draft from appropriate Community CI agency and other leaders. But before doing so, I would like, if possible, to obtain the benefit of your comments and suggestions, especially with respect to the proposed role of the Attorney General. Other alternatives could be for the Attorney General to serve as co-chairman of the NCPC with the DCI, or for the Deputy Attorney General to be an NCPC member with the DCI as chairman. For the reasons cited in paragraph 6 above, however, I believe it best for the Attorney General to chair the policy committee.

10. Your cooperation and help via an early reply will be appreciated. Please do not hesitate to call regarding any questions.

George Bush

Attachment:

Draft Executive Order

cc: Committee on Foreign Intelligence:

Mr. Ellsworth

Mr. Hyland

Assistant to the President for National

Security Affairs: General Scowcroft

Chairman, President's Foreign Intelligence

Advisory Board: Mr. Cherne

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NATIONAL FOREIGN COUNTERINTELLIGENCE
POLICY, ACTIVITY AND PRODUCTION

1. Purpose

a. To develop national foreign counterintelligence policies for protection of the national security while safeguarding the constitutional and statutory rights of U.S. citizens.

b. To facilitate the implementation of effective foreign counterintelligence activities.

2. Definition

For the purposes of this directive, "foreign counterintelligence" has the meaning assigned to it by Executive Order 11905 of February 18, 1976, i.e., "activities conducted to protect the United States and United States citizens from foreign espionage, sabotage, subversion, assassination or terrorism." "Foreign counterintelligence activities" is further defined by this directive (a) to include the processes of collecting, developing, recording, and disseminating information concerning intelligence activities of foreign individuals, groups, organizations, or nations; and (b) to also include the information product, consisting of information on foreign intelligence and security services, other foreign instrumentalities engaged in intelligence-type activities, and foreign based terrorist groups, including their authority, organizational structure, policies, status within the government and/or relationships with other groups, plans, procedures, funding, files and other information handling systems, training, operational modus operandi, targeting, personnel (of all types and

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relationships), cover practices, liaison relationships with other foreign intelligence and security services, technical systems and capabilities, security systems and vulnerabilities.

3. Limitations

This directive will be implemented with full regard to the legal and/or constitutional rights of United States citizens.

4. National Counterintelligence Policy Committee

There is hereby established a National Counterintelligence Policy Committee (NCPC) subordinate to the National Security Council.

a. Membership of the NCPC will consist of the following:

The Attorney General, Chairman
Director of Central Intelligence
Deputy Secretary of Defense
Deputy Assistant to the President for National
Security Affairs
Under Secretary of State for Political Affairs
Director, Federal Bureau of Investigation

b. The NCPC will be responsible for:

(1) Issuing broad national-level policy guidance for the foreign counterintelligence activities of all United States Government departments and agencies.

(2) Acting as an appeal body to decide issues considered by but not resolved by the National Foreign Counterintelligence Board (NFCB), including such issues as interagency disagreements over foreign

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counterintelligence coordination, priorities, extent of effort, and national policy implementation.

c. Decisions of the NCPC may be reviewed by the National Security Council upon appeal by the Attorney General, the Director of Central Intelligence or any member of the National Security Council.

d. Staff support for the NCPC will be provided as jointly agreed between the Attorney General and the Director of Central Intelligence.

5. National Foreign Counterintelligence Board

There is hereby established a National Foreign Counterintelligence Board (NFCB) subordinate to and the action instrumentality of the National Counterintelligence Policy Committee (NCPC):

a. Membership will consist of the following:

A representative of the Attorney General

A representative of the Deputy Secretary of Defense

Deputy Assistant Secretary of State for Security

A representative of the FBI Director (the head of the Intelligence Division)

Chief of the CIA Counterintelligence Staff

Counterintelligence Chiefs of the Military Services

A representative of the Director, National Security Agency

b. The Chairman of the NFCB will be designated by the Director of Central Intelligence with the concurrence of the Attorney General.

c. The NFCB will be responsible for:

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(1) Overseeing the implementation of national foreign counterintelligence policies.

(a) Resolving interagency differences over such implementation, including possible problems of extent and nature of coordination; of training; of liaison with foreign services; and methods of operation.

(2) Monitoring foreign counterintelligence activities to establish priorities and objectives for foreign counterintelligence (a) investigations for operational leads, (b) collection, (c) operations, (d) production and (e) research and development.

(3) Reviewing and reestablishing guidelines for the maintenance of central records of foreign counterintelligence information, now being maintained by CIA in accordance with existing Intelligence Directives.

(a) Determining the locus of such a central depository.

(b) Assuring that all organizations engaged in foreign counterintelligence activity make adequate and timely inputs of information directly related to foreign counterintelligence.

(4) Assuring that foreign counterintelligence information is collated, analyzed and disseminated in timely and useful studies or reports to foreign counterintelligence users -- national, departmental or inter-departmental.

(5) Conducting periodic evaluations of the execution of foreign counterintelligence activities.

(6) Reviewing particularly sensitive and important foreign counterintelligence operations, as determined by criteria to be established by the NCPC, and making appropriate related recommendations to the NCPC.

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(7) Coordinating as appropriate with any other interagency organizations on foreign counterintelligence-related activities.

d. Decisions of the NFCB may be reviewed by the NCPC upon appeal by the Chairman of the NFCB or any member of the NCPC.

e. Staff support to the NFCB will be provided by the Intelligence Community Staff.

6. Agencies Engaged in Foreign Counterintelligence Activities

a. Departments and agencies engaged in foreign counterintelligence activities will comply with the policies of the NCPC and the decisions of the NFCB concerning the implementation of these policies.

b. Departments and agencies engaged in foreign counterintelligence activities will provide information to the NFCB or NCPC as required by either body for the performance of its responsibilities. Requirements for such information must take into account, however, the necessity to protect intelligence sources and methods and will not include information not essential for the effective accomplishment of the responsibilities of either body.

7. Enabling Data

a. The NCPC, NFCB, Attorney General and Director of Central Intelligence shall provide for detailed implementation of this Directive by issuing appropriate directives.

b. Departments and agencies engaged in foreign counterintelligence activities shall issue supplementary directives to their organizations as necessitated by this Directive and paragraph 7.a. above directives.

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HRD/[] b (25 August 76)

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DRAFT -- 24 August 1976

SUBJECT : National Foreign Counterintelligence Policy and
Coordination Mechanisms

25X1 1. Attached herewith for D/DCI/IC approval is a draft memo from Mr. Bush to Mr. Levi, the Attorney General, requesting Mr. Levi's comments on a proposed attached unclassified Executive Order. This Order would establish a National Counterintelligence Policy Committee under the Attorney General as Chairman, and a subordinate National Foreign Counterintelligence Board. The draft has been coordinated only with OGC.

2. Because the Executive Order makes the Attorney General the NCPC chairman, an earlier draft was provided informally on 24 June 1976, with D/DCI/IC prior sanction, to Mr. Douglas Marvin, a Special Counselor on his staff. Informal comment and hoped-for agreement in principle to the Attorney General's proposed role was sought. Other than an initial expression of reservation about his participation, there has been no response. The attached prior formal transmittal and request for comment is therefore needed before others in the Community can be checked.

3. The Attorney General's chairmanship of the NCPC is regarded as the best approach but there are other alternatives if he does not favor his chairing the NCPC.

a. Attorney General as NCPC Chairman:

As the nation's chief legal officer, he is the only national level officer, below the President, whose authority encompasses the FBI's domestic foreign CI activities and its domestic internal security functions. He is thus best able to define any uncertain problem areas. Furthermore, he is specifically charged by E.O. 11905 with establishing regulations governing the FBI's foreign CI activities. Since this inherently involves domestic U.S. political and legal considerations, he can both bridge the gap between the FBI and other foreign CI agencies and assure that provisions are made for protection of the rights of U.S. citizens.

b. DCI as NCPC Chairman or Co-Chairman:

25X1 [] OGC, does not believe the Attorney General's
25X1 chairmanship to be essential, although he regards it as probably more
publicly prudent. [] believes the authority of the DCI for
foreign counterintelligence, as set forth in E.O. 11905, is sufficient
to chair a national foreign CI committee. The authority of the Attorney
General to define and delimit problem areas, to adequately mesh the FBI
with other agencies engaged in foreign CI activities, and to assure the
protection of the rights of individuals, could be obtainable by making
the Attorney General a co-chairman of the NCPC with the DCI, or by making
the Deputy Attorney General an NCPC member under the DCI as sole chairman.
This approach would give the leading role to an official, the DCI, whose
primary interest and field of knowledgeability is intelligence, including
foreign CI.

4. The directive is recommended for issuance as an Executive Order, but there are other alternatives, i.e. a DCI Directive (DCID) or an NSC Intelligence Directive (NSCID). A CFI Directive is not an alternative.

25X1 [] has advised that the CFI does not appear to have the requisite authority.

a. DCID: Although technically it might be issued as a DCID, a DCID would not be appropriate if the Attorney General is chairman or co-chairman of the NCPC because of his stature in the government. This rationale would be less pertinent if the Deputy Attorney General rather than the Attorney General is on the NCPC. The substance of the directive would seem to make politically desirable the authority of the President, which requires either a White House Executive Order (E.O.) or an NSCID.

b. E.O.: Makes Presidential concern, involvement, and responsibility more visible, which has both pluses and minuses; rounds out the national foreign intelligence policy coverage of E.O. 11905; and lends itself well to unclassified publicized issuance.

c. NSCID: Does not involve the President as visibly, which also has both pluses and minuses; and may be less effective as an unclassified, publicized issuance.

The necessary authority for either an E.O. or an NSCID requires Presidential approval. There is no likely timesaving gainable via the NSCID route. An Executive Order is therefore recommended.

Attachment:

As stated

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Routing Slip

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Remarks:

Please coordinate with General Counsel

Exe

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Remarks:

Please prepare DCI response.

Executive Secretary
15 November 1976

Date

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| 1 | Asst. to DDCI | | |
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| ACTION | | DIRECT REPLY | PREPARE REPLY |
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| COMMENT | | FILE | RETURN |
| CONCURRENCE | | INFORMATION | SIGNATURE |
| Remarks: <p>As a followup to our discussion the other day, here is an informal copy of the draft proposed Executive Order on CI about which we spoke and in which you expressed an interest on behalf of Hank Knoche. The draft has been shown to and discussed with [redacted] You might wish to give a copy to Bill Wells, but it should not be shown or discussed outside the Agency.</p> <p>The DCI is sending the draft to the AG for comment with courtesy copies to Gen. Scowcroft, Mr. Hyland, Amb. Ellsworth and Mr. Cherne.</p> <p>[redacted] (over)</p> | | | |
| O SENDER | | | |
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